

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF KITTITAS  
STATE OF WASHINGTON

RESOLUTION

NO. 2012-037

**TO AUTHORIZE CHAIR SIGNATURE FOR THE ON-CALL SURVEYING SERVICES  
CONTRACT AND FOR THE DIRECTORS OF SOLID WASTE, PUBLIC WORKS AND  
FAIRGROUNDS SIGNATURE AUTHORITY**

**WHEREAS:** The County periodically requires professional on-call surveying; and

**WHEREAS:** The County publically advertised the need for such services; and

**WHEREAS:** The County selected Cruse and Associates to provide these services for a period of three years; and

**WHEREAS:** The consultant will provide a task order for describing the task and cost for such prior to agreement to proceed with a given project; and

**WHEREAS:** Director Signature authority to \$50,000 will aid the departments maintaining infrastructure and facilities to more responsively serve the public; and


**NOW, THEREFORE BE IT RESOLVED** that the Board of County Commissioners, in the best interest of the public, does hereby authorize the Chair to sign the consultant agreement.

**BE IT FURTHER RESOLVED** that the Board of County Commissioners authorizes the directors of Fairgrounds, Solid Waste and Public Works signature authority for task orders totaling less than \$50,000 per project.

**DATED** this 3rd day of April, 2012, at Ellensburg, Washington.

**BOARD OF COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

  
\_\_\_\_\_  
**Alan Crankovich, Chair**

  
\_\_\_\_\_  
**Obie O'Brien, Vice-Chair**

  
\_\_\_\_\_  
**Paul Jewell, Commissioner**



  
\_\_\_\_\_  
**Clerk of the Board**



**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

**WHEREAS**, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

**WHEREAS**, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

**I General Description of Work**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

**II Scope of Work**

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

**III General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

#### **V Payment Provisions**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

#### **VI Sub-Contracting**

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

#### **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

### **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

### **IX Termination of Agreement**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X Changes of Work**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

## **XII Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

### **XIII Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

#### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

#### **XVI Federal and State Review**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

#### **XVII Certification of the Consultant and the Agency**

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

#### **XVIII Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### **XIX Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.



In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By Chris Cruse, PLS 36815 By AL C. C. C.

Consultant Cruse and Associates, PLLC Agency Kittitas County 4/3/12

**Exhibit A-2  
Scope of Work  
(Task Order Agreement)**

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

- A. Land Surveying Services
- B. Other professional services as requested by Kittitas County
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this exhibit.

An assignment shall become effective when a formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.

## **Exhibit D-3**

### **Payment (Negotiated Hourly Rate)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit "E" and "F" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.
2. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and sub-consultant costs.
  - a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs."
  - b. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
  - c. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
  - d. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."

4. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Exhibit "E", including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
6. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

7. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit E-2**  
**Consultant Fee Determination - Summary Sheet**  
**(Specific Rates of Pay)**  
**Fee Schedule**

<b>Discipline or Job Title</b>	<b>Hourly Rate</b>	<b>Overhead @ 2.4267 %</b>	<b>Profit @ .30 %</b>	<b>Rate Per Hour</b>
Project Surveyor (Licensed)	38.46	93.33	11.54	143.33
Party Chief (Prof. Services)	21.75	52.78	6.53	81.06
Instrument Man (Prof. Services)	16.35	39.68	4.91	60.93
Chainman (Prof. Services)	13.35	32.40	4.01	49.75
Party Chief (Prevailing Wage)	50.39	122.28	15.12	187.79
Instrument Man (Prevailing Wage)	49.48	120.07	14.84	184.40
Chainman (Prevailing Wage)	48.96	118.81	14.69	182.46
Drafter	28.45	69.04	8.54	106.02
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00
		0.00	0.00	0.00

**Exhibit F**  
**Breakdown of Overhead Cost** 1/1/2010 to 12/31/2010

Account Title	\$ Beginning Total	% of Direct Labor
Direct Labor	119,015.33	100.00%
Overhead Expenses:		
FICA	20,219.79	16.99%
Unemployment	2,159.43	1.81%
Health/Accident Insurance	18,603.69	15.63%
Medical Aid & Industrial Insurance	1,058.38	0.89%
Holiday/Vacation/Sick Leave	29,711.00	
Commission/Bonus/Pension	21,574.00	18.13%
<b>Total Fringe Benefits</b>	<b>93,326.29</b>	<b>78.42%</b>
General Overhead:		
State B&O Taxes	6,016.42	5.06%
Insurance	9,357.00	7.86%
Administration & Time Not Assignable	94,010.66	78.99%
Printing, Stationery & Supplies	3,534.96	2.97%
Professional Services		
Travel Not Assignable	42,769.28	35.94%
Telephone & Telegraph Not Assignable		
Fees, Dues & Professional Meetings	10,269.53	8.63%
Utilities & Maintenance	6,786.92	5.70%
Professional Development	3,233.33	2.72%
Rent	11,350.00	9.54%
Equipment Support	6,364.54	5.35%
Office, Miscellaneous & Postage	1,797.30	1.51%
<b>Total General Overhead</b>	<b>195,489.94</b>	<b>164.26%</b>
<b>Total Overhead (General + Fringe)</b>	<b>288,816.23</b>	<b>242.67%</b>
<b>Overhead Rate (Total Overhead / Direct Labor)</b>	<b>242.67%</b>	

Exhibit G-2  
WH Pacific Inc.

Job Title	Hourly Rate	Overhead @ 179.53%	Profit @ 30 %	Rate Per Hour
Principal	\$60.05	\$107.81	\$32.34	\$200.20
Scanning Project Manager	\$55.29	\$99.26	\$29.78	\$184.33
Sr. Scanning Technician	\$30.00	\$53.86	\$16.16	\$100.02
Survey Manager	\$48.50	\$87.07	\$26.12	\$161.69
Sr. Surveyor	\$45.36	\$81.43	\$24.43	\$151.23
Sr. Party Chief	\$35.88	\$64.42	\$19.32	\$119.62
Party Chief	\$28.00	\$50.27	\$15.08	\$93.35
Sr. Survey Technician	\$23.00	\$41.29	\$12.39	\$76.68
Survey Technician	\$18.00	\$32.32	\$9.69	\$60.01
Office Surveyor	\$38.59	\$69.28	\$20.78	\$128.65

Equipment Description	Rate
LYNX Mobile Mapping System	7500/day
Static Scanner (Leica or Faro)	500/day
GPS Receivers	100/Day
Survey Truck	0.75/mile

WHPacific, Inc.  
Overhead Schedule  
For the Year Ended September 28, 2009

Exhibit G-3

Description	Financial Statement Amount	WHPacific Adj.	WSDOT Adj.	Ref.	Accepted Amount	%
<b>Direct Labor</b>	<u>\$19,896,481</u>	<u>(\$304,180)</u>	<u>\$33,599</u>	P,Q,W,X	<u>\$19,625,900</u>	100.00%
<b>Fringe Benefits:</b>						
Fringe Benefits	\$12,044,451	(\$4,338)	(\$28,500)	E	\$12,011,612	61.20%
Unallowable fringe benefits			(\$794,699)	Z	(\$794,699)	-4.05%
				B,K,S,Y,a,		
Other Payroll Related Costs	<u>\$556,505</u>	<u>(\$17,824)</u>	<u>(\$253,414)</u>	b,c	<u>\$285,267</u>	1.45%
<b>Total Fringe Benefits</b>	<u>\$12,600,955</u>	<u>(\$22,162)</u>	<u>(\$1,076,613)</u>		<u>\$11,502,180</u>	58.61%
<b>General Overhead:</b>						
Indirect Labor	\$13,671,387	(\$2,816,627)		O,T,U,V	\$10,854,760	55.31%
Variance Account		\$152,419	(\$152,419)	Q,W	\$0	0.00%
Marketing Labor		(\$2,170,457)		B	(\$2,170,457)	-11.06%
Bid and Proposal Labor		\$2,230,978		U	\$2,230,978	11.37%
Travel	\$688,708	(\$80,974)		B,N	\$607,734	3.10%
Freight	\$81,305	(\$1,475)		B	\$79,830	0.41%
Legal	\$417,364	(\$294,847)		D,O	\$122,516	0.62%
				A,L,O,R,d,		
Consulting	\$866,464	(\$46,189)	(\$1,677)	e	\$818,598	4.17%
Occupancy	\$4,634,071				\$4,634,071	23.61%
Communications	\$589,783	(\$693)		B	\$589,090	3.00%
Insurance	\$730,981		(\$721)	f	\$730,260	3.72%
Depreciation and Amortization	\$1,711,818		(\$11,982)	f	\$1,699,836	8.66%
Property Maintenance and taxes	\$122,821				\$122,821	0.63%
Equipment rent and operations	\$1,176,631	(\$1,243)	(\$295)	B,H,f	\$1,175,093	5.99%
Office operations	\$1,887,580	(\$22,321)		B,H,K	\$1,865,258	9.50%
Business Development	\$131,535	(\$23,703)		B,C,G	\$107,832	0.55%
Advertising/Printing	\$194,548	(\$136,960)		B,C	\$57,587	0.29%
Entertainment	\$4,279	(\$4,279)		G	\$0	0.00%
Contributions	\$16,325	(\$16,325)		F,J	\$0	0.00%
Bad Debts	\$600,143	(\$600,143)		D	\$0	0.00%
Other Taxes, except Federal Income	\$205,043				\$205,043	1.04%
Loss on sale of Assets	\$21,188				\$21,188	0.11%
Miscellaneous reimbursements	(\$15,941)				(\$15,941)	-0.08%
Interest	\$418,696	(\$418,696)		H,I	\$0	0.00%
Federal Income Taxes	\$4,445,100	(\$4,445,100)		M	\$0	0.00%
Reimbursed unit costs	<u>(\$232,586)</u>				<u>(\$232,586)</u>	-1.19%
<b>Total General Overhead</b>	<u>\$32,367,243</u>	<u>(\$8,696,634)</u>	<u>(\$167,095)</u>		<u>\$23,503,514</u>	119.76%
<b>Total Overhead Costs</b>	<u>\$44,968,198</u>	<u>(\$8,718,796)</u>	<u>(\$1,243,708)</u>		<u>\$35,005,695</u>	178.36%
<b>Overhead Rate (Less FCC)</b>	226.01%	185.02%			<u>178.36%</u>	
 Facilities Cost of Capital	0.00%	228,573			<u>\$228,573</u>	1.16%
					<u>\$35,234,268</u>	
<b>Overhead Rate (Includes FCC)</b>					<u>179.53%</u>	

WHPacific Inc. - Reviewed & Accepted 12/23/10 SE  
"Overhead Rate still subject to WSDOT Audit"



WHPacific, Inc.  
Overhead Schedule  
For the Year Ended September 28, 2009

Exhibit G-3

Description	Financial Statement Amount	WHPacific Adj.	WSDOT Adj.	Ref.	Accepted Amount	%
<b>References</b>						
<b>WHPacific Adjustments:</b>						
<i>WHPacific, Inc. Overhead Audited by Jones &amp; Roth and other adjustments per WSDOT policy</i>						
A Cost directly associated with unallowable costs 48 CFR 31-201-6(a)						
B Public relations and advertising unallowable per 48 CFR 31.205-1.						
C Costs of memberships in civic and community organization unallowable per 48 CFR 31.205-1(f)(7).						
D Bad debt or costs associated with collecting bad debt unallowable per 48 CFR 31-205-3						
E Cost of company furnished automobiles that relate to personal use by employees unallowable per 48 CFR 31.205-6(m)(2)						
F Contributions unallowable per 48 CFR 31.205-81.						
G Entertainment unallowable per 48 CFR 31.205-14.						
H Fines, penalties, and mischarging costs unallowable per 48 CFR 31-205.15						
I Interest and other financial costs unallowable per 48 CFR 31.205-20						
J Lobbying and political activity costs unallowable per 48 CFR 31.205-22						
K Organization costs unallowable per 48 CFR 31.205-27						
L Professional and consultant service costs unallowable per 48 CFR 31.205-33						
M Taxes and licenses unallowable per 48 CFR 31.205-41.						
N Lodging, meal, and mileage rates in excess of federal travel regulation unallowable per WSDOT Accounting Manual, M13-82, Chapter 10 Travel and 48 CFR 31.205-46(a)(2).						
O Legal Costs in relation to litigation unallowable per 48 CFR 31.205-47(f)(5) including indirect labor of \$44,368.						
P Overtime premium for direct unallowable per 48 CFR 22.103-1, 22.103-4(g) & WSDOT O/H Policy in the amount of \$151,761.						
Q Adjustment for uncompensated overtime totaling per 48 CFR 37.115 & DCAA 5-910, 5-910.2 & 6-6410 in the amount of \$152,419.						
R Federal Income Tax Prep Fees allowable \$250 per 48 CFR 31.205.41(b)(1), 31.201-6(a) & WSDOT O/H Policy						
S Adjustment for allowable Summer Picnic costs per 48 CFR 31.205-14 & WSDOT O/H Policy						
T Severance payments unallowable per WSDOT O/H policy in the amount of \$494,015.						
U Bid and Proposal labor moved from indirect labor for transparency						
V Overtime premium for indirect unallowable per 48 CFR 22.103-1, 22.103-4(g) & WSDOT O/H Policy in the amount of \$47,266.						
<b>WSDOT Adjustments:</b>						
W Adjustment to increase the direct labor base by \$152,419.11 and zero out the labor variance account. <i>This adjustment was to offset WH Pacific's reduction to direct labor for uncompensated overtime. Salary exempt employees are compensated for all direct hours (billable or nonbillable) over 40 hours per week. WH Pacific accounts for uncompensated overtime internally.</i>						
X Overtime premium in the amount of \$118,820.44 unallowable per 48 CFR 22.103-1, 22.103-4(g) & WSDOT O/H Policy. <i>This amount was not previously removed in adjustment P.</i>						
Y Referral bonus in the amount of \$28,500 & PSI accrual bonus in the amount of \$118,015.85 unallowable per 48 CFR 31.205-6(f) & AASHTO Audit Guide 5-2.						
Z Fringe benefits associated with WH Pacific's marketing labor per 48 CFR 31.201-6(a). <i>See worksheet "Fringe Benefit Est." for adjustment calculation.</i>						
a Relocation payments in the amount of \$34,684.10 unallowable per 48 CFR 31.205-35(b)(2). <i>Reimbursement on a lump sum basis is only allowable when supported by data on the individual elements comprising the build-up of the lump-sum amount.</i>						
b Powerstart membership fees paid to laid off employees in the amount of \$63,000 unallowable per 48 CFR 31.205-13(b) & 31.201-6(a). <i>Related to reference T for unallowable severance. The firm was advised in 2009 that they should have a severance policy; however, they have not adopted one at this time.</i>						
c Employee morale account includes thanksgiving turkeys, welcome lunches, dinners, birthday celebrations, flowers, etc. <i>These items are unallowable per 48 CFR 31.205-13(b), 31.205-13(e) &amp; 31.205-14. The allowable amount was for picnic and holiday party expenses.</i>						
d Events Specialists in the amount of \$807.50-unallowable per 48 CFR 31.205-14						
e Federal Income Tax Prep Fees in excess of \$250 unallowable per 48 CFR 31.205-41(b)(1), 31.201-6(a) & WSDOT OH Policy						
f Costs associated with personal use of company owned vehicles unallowable per 48 CFR 31.205-6(m)(2). <i>This amount was provided by WH Pacific.</i>						

## **Exhibit H**

### **Title VI Assurances**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

**Exhibit I**  
**Payment Upon Termination of Agreement**  
**By the Agency Other Than for**  
**Fault of the Consultant**

**(Refer to Agreement, Section IX)**

**Lump Sum Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Cost Plus Fixed Fee Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

**Cost Per Unit of Work Contracts**

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

## **Exhibit J**

### **Alleged Consultant Design Error Procedures**

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

#### **Step 1 – Potential Consultant Design Error(s) is Identified by Agency's Project Manager**

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

#### **Step 2 - Project Manager Documents the Alleged Consultant Design Error(s)**

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

#### **Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)**

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

#### **Step 4 – Attempt to Resolve Alleged Design Error with Consultant**

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide H&LP, through the Region

Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

#### **Step 5 – Forward Documents to Highways and Local Programs**

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, H&LP will request assistance from the Attorney General's Office for legal interpretation. H&LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. H&LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

## **Exhibit K**

### **Consultant Claim Procedures**

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

#### **Step 1 – Consultant Files a Claim with the Agency Project Manager**

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

#### **Step 2 – Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation**

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

### **Step 3 – Preparation of Support Documentation Regarding Consultant's Claim(s)**

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

### **Step 4 – Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation**

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

### **Step 5 – Informing Consultant of Decision Regarding the Claim**

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

### **Step 6 – Preparation of Supplement or New Agreement for the Consultant's Claim(s)**

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.



**Exhibit M-4**  
**Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of On-Call Surveying Services \* are accurate, complete, and current as of April 3, 2012 \*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm Cruse and Associates, PLLC

Name Christopher Cruse, P.L.S. #36815

Title Member

Date of Execution\*\*\* April 3, 2012

\* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.